

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

August 12, 1992
AO-92-16

William A. Carey, Jr.
155 Lake Street
Arlington, MA 02174

Re: Person in the Service/M.G.L. c.55, s.15

Dear Mr. Carey:

This letter is in response to your July 2, 1992 letter requesting an advisory opinion regarding whether you may be treasurer of the Arlington Democratic Town Committee.

You stated that you are an elected member of the Arlington School Committee and you also were elected in a March primary to the Arlington Democratic Town Committee. You stated that you were subsequently elected as treasurer of the Democratic Town Committee due to your financial background. You ask whether as an elected member of the School Committee, which is a non-compensated position, you may also serve in the capacity of treasurer to the Democratic Town Committee.

Since the School Committee position is non-compensated, you are not subject to the M.G.L. c.55, s.13 prohibitions against political solicitation by a "person employed for compensation . . . by the commonwealth." In addition, you are also exempt from these restrictions due to your status as an elected official.¹ See M.G.L. c.55, s.13.

1. For the purposes of this advisory opinion we assume that you are not otherwise employed for compensation by the commonwealth or any other subdivision thereof. If you were so employed you would of course also be subject to M.G.L. c.55, s.13.

There are other sections of the campaign finance statute which I would draw your attention to. Specifically, you may be subject to the restrictions of M.G.L. c.55, s.15, as a "person in the service of the commonwealth." Section 15 states in pertinent part:

No officer, clerk or other person in the service of the commonwealth or of any county, city or town shall, directly or indirectly, give or deliver to an officer, clerk or person in said service, or to any councillor, member of the general court, alderman, councilman or commissioner, any money or other valuable thing on account of, or to be applied to, the promotion of any political object whatever (emphasis added).

The answer to your question turns primarily on whether your position as a member of the School Committee makes you a "person in the service" of the Town. A careful reading of the relevant provisions of chapter 55, as well as previous advisory opinions of this Office, indicate that the phrase "person in the service" was intended to include any elected, appointed or other person, regardless of compensation,² who is providing significant public services to the commonwealth or one of its subdivisions or authorities.

This Office has found many elected or appointed officials to be "persons in the service," including an elected school committee member. As we stated in AO-92-01:

Hence, the Office has advised that various appointed and elected persons are "persons in the service." See AO-82-26 (appointed members of Massachusetts Convention Center Authority), AO-85-04 (appointed members of the Board of Trustees of Massachusetts College of Art), AO-88-07 (appointed members of Board of Trustees of Bristol County Community College), AO-88-17 (non-compensated, elected members of a local school committee) and AO-89-10 (appointed Chairman of a Board of Registrars).

2. Section 13 governs the conduct of "persons employed for compensation;" section 15, however, governs the conduct of "persons in the service." It has been the long held position of the Office that while section 13 applies only to compensated public employees, section 15 applies both to compensated and uncompensated persons if they are determined to be "persons in the service." Such an interpretation is consistent with the statutory rule of construction that different words and phrases in related statutes are presumed to have different meanings unless the context clearly indicates otherwise.

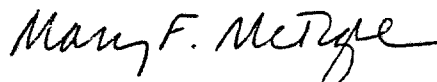
Therefore, it is the opinion of this Office that you are a "person in the service of [a] town" subject to the restrictions of section 15. As a practical matter, the above conclusion would appear to preclude you from acting in the capacity of treasurer of the Democratic Town Committee. As such, any other person in the service of the Town (or the commonwealth or any of its subdivisions or authorities) would be prohibited from giving any money or other things of value to you, either directly or indirectly. As the Office concluded in AO-88-18:

We believe it would be very difficult for the treasurer of a [municipal] political committee, as the chief financial person, to avoid receiving monies from other public officials, including full-time employees such as policemen, firemen and teachers, unless there was an outright ban by the committee on receiving such monies.³

In conclusion, it is this Office's opinion that M.G.L. c.55, s.15 precludes you from serving as treasurer of a political committee unless the political committee adopts and applies a contributions policy which prohibits contributions by any "persons in the service of the commonwealth or any county, city or town."

This opinion has been rendered solely on the basis of representations made in your letter and assumptions set forth in the opinion, and solely in the context of M.G.L. c.55. Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Very Truly Yours,



Mary F. McTigue
Director

MM/wp

3. 970 CMR 1.04 mandates that treasurers exercise their best efforts to determine the legality of all contributions at the time of receipt. Contributions which are illegal (or inconsistent with an adopted policy of the political committee, such as a ban on contributions from public employees or so-called PAC money) may be returned or refunded in accordance with sections 1.04(8) and (9)(b). Refund policies "must be stated and applied in an open and consistent manner."